IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5368 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI MANEKLAL PARMAR

Versus

MANAGER

Appearance:

1. Special Civil Application No. 5368 of 1999

MS SEJAL K MANDAVIA for Petitioner No. 1

MR. H.D. DAVE,GOVERNMENT PLEADER for Respondent No. 1

MR BA VAISHNAV for Respondent No. 1

RULE SERVED for Respondent No. 2

RULE UNSERVED for Respondent No. 3

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 07/02/2002

ORAL JUDGEMENT

1. In this writ petition, the petitioner who was appointed as Recovery Officer under Respondent no.1 after his retirement from his regular service with State Government, has questioned the legality and propriety of

the impugned order dated 7-4-1999 passed in Appeal No. 6 of 1999 by the Appellate Authority, under Payment of Gratuity Act, 1972.

2. The facts leading to filing of the present petition shortly shortly are:-

That the petitioner was earlier serving as Deputy Collector with the State Government and after his retirement from the said service, he was appointed as Recovery Officer under respondent no.1 for recovery of the dues payable by the Cooperative Societies to respondent No. 1.

The petitioner was appointed as such on 11-10-1986. He worked as Recovery Officer till 15-5-1993 and his services were put to an end vide order dated 5-5-1993. Thereafter on 5-6-1993 petitioner was again appointed as Recovery Officer under respondent No.1 and the petitioner worked as Recovery Officer Officer under respondent No.1 till 18-10-1997.

The petitioner applied before the Controlling Authority, Payment of Gratuity Act, claiming gratuity for the period from 11-10-1986 till 18-10-1997 for a period of 11 years, during which he states to have worked as Recovery Officer under respondent No.1. Controlling Authority under the said Act acceded to the request of the petitioner and directed respondent No.1 to pay gratuity amounting to Rs.16,830/within fifteen days.

Respondent No. 1 challenged the said order passed by the Controlling Authority under the Act by way of Appeal No. 6 of 1999 before the appellate authority under the Act. The appellate authority vide order dated 7-4-1999 partly allowed the appeal preferred by respondent no.1 and set aside the order passed by the controlling authority to the extent holding the present petitioner to be entitled to the gratuity for the period only for the first part of the service, namely from 11-10-1986 to 15-5-1993 and disallowed the claim for gratuity for the subsequent period, that is from 5-6-1993 to 18-10-1997.

3. The petitioner by present Special Civil Application has been questioning the legality of the order of the appellate authority disallowing the claim for gratuity for the period 5-6-1993 to 18-10-1997.

It is submitted by Ms. S.K. Mandavia, learned counsel for the petitioner that, the appellate authority

is not legally justified in disallowing claim of gratuity for the period 5-6-1993 to 18-10-1997 in as much as the break of 20 days is artificial and that the services of the petitioner should have been treated as one continuous for the purpose of gratuity payable to the petitioner. It is further submitted that the order passed by the controlling authority directing payment of Rs.16,830/- by way of gratuity to the petitioner be restored.

As against this, it is submitted by Mr. B.A. Vaishnav, learned counsel for respondent No.1 that the petitioner was relieved from service w.e.f. 15-5-1993 and his rejoining as Recovery Officer under respondent No. 1 from 5-6-1993 being a distinct employment cannot be regarded as continuing service and the break, may be of 20 days, would disentitle the petitioner to claim gratuity treating his service as one continuous and the subsequent period i.e. from 5-6-1993 to 18-10-1997 is less than five years which would also disentitle the petitioner to the payment of gratuity for the subsequent period.

4. As seen above, it is not in dispute that the petitioner retired from the regular employment with the State Government some time in 1986 and thereafter petitioner joined as Recovery Officer under respondent No.1 for the recovery of the amount due to respondent No.1 payable by the Co. Operative Societies under the Gujarat Cooperative Societies Act. It is also not in dispute that the petitioner in the first instance worked under respondent No. 1 as Recovery Officer from 11-10-1986 to 15-5-1993 and after break of 20 days he again joined respondent No.1 as Recovery Officer on 5-6-1993 and worked as such till 18-10-1997. Admittedly there is a break of 20 days in the service of the petitioner under respondent No. 1 as Recovery Officer.

5. It would be appreciated that, after the petitioner was relieved on 15-5-1993 he again joined respondent No.1 as Recovery Officer w.e.f. 5-6-1993, thus there is a break of 20 days in the service of the petitioner with respondent No.1 as Recovery Officer. If the petitioner was not to be taken back in service of respondent no.1, then, he would not have been asked to join after a break of only 20 days and the petitioner's rejoining respondent no.1 w.e.f. 15-5-1993 would be suggestive of the fact that, break of 20 days was nothing but an eye wash and this break can be regarded as an artificial break so as only to disentitle the petitioner to the gratuity for the period that he worked with the respondent No.1. Had the petitioner rejoined respondent

No.1 after a gap of some months or a year then the break can not be regarded as an artificial break or an eye wash, but the very fact that the respondent No.1 absorbed the petitioner again in its service after a break of 20 days only, then, the break has to be regarded as a break on paper only and such break cannot disentitle the petitioner to the benefit of gratuity and his service has to be considered as one continuous. Under the circumstances I am inclined to consider the service of the petitioner with respondent No.1 as one continuous right from 11-10-1986 to 18-10-1997, i.e. for a period of 11 years and the petitioner would be entitled to the payment of gratuity considering his employment with respondent no.1 as one continuous.

6. The above discussion would suggest that the order passed by the controlling authority directing payment of Rs.16,830/- as gratuity to the petitioner deserves to be restored, while the order dated 7-4-1999 passed in Appeal No. 6 of 1999 by the appellate authority under Payment of Gratuity Act, deserves to be set aside to the extent as above.

7. In the result the Special Civil Application deserves to be granted. It is stated by Mr. Vaishnav, learned counsel for the respondent No.1 that the gratuity as ordered by the controlling authority has already been deposited. If the said amount is deposited by respondent No.1 then the same be paid to the petitioner. In case the amount is not deposited, then , respondent No.1 shall pay the same to the petitioner within a period of two months from today. Petition disposed of accordingly. Rule made absolute. No order as to costs.

Dt: 7-2-2002 (N.G. Nandi, J)

/vgn.